JUDGE MARRERO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

'07 CIV 6422

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FEDERAL INSURANCE COMPANY a/s/o
AAA MID-ATLANTIC, INC.,

Index No. 601997/07

Civil Action pending in the New York Supreme Court – New York County under Index No. 601997/07

Plaintiffs,

Against,

NOTICE OF REMOVAL

AMERICAN HOME ASSURANCE COMPANY and
NATIONAL UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PA.,

Defendants.

---X

RECEIVED
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CASHIERS

TO: THE CLERK AND THE HONORABLE JUDGES
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
U.S. Courthouse, 500 Pearl Street
New York, New York 10007-1312

SIR OR MADAM:

Defendants AMERICAN HOME ASSURANCE COMPANY ("AHA") and NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA ("National Union"; collectively, "Defendants"), hereby file this Notice of Removal of the above-captioned action to the United States District Court for the Southern District of New York from the Supreme Court of the State of New York, County of New York (Index No.

601997/07) where the action is now pending, as provided by 28 U.S.C. §§ 1332, 1441 and 1446.

THE COURT'S REMOVAL JURISDICTION

1. Plaintiff Federal Insurance Company a/s/o AAA Mid-Atlantic, Inc. ("Federal") commenced this action by filing a Summons and Complaint in the Supreme Court of the State of New York, County of New York, captioned Federal Insurance Company a/s/o AAA Mid-Atlantic, Inc. v. American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA., and bearing Index No. 601997/07 (the "State Court Action"). A copy of the Summons and Complaint filed in the State Court Action is annexed hereto as ***Exhibit A.***

2. Plaintiff served Defendants with the Summons and Complaint on June 15, 2007. This Notice of Removal is filed within thirty (30) days of that date, as required by 28 U.S.C. § 1446(b). A copy of the Affidavits of Service indicating that service was effectuated on June 15, 2007 are annexed hereto as ***Exhibit B.***

3. The State Court Action is a civil action of which the District Courts of the United States have original jurisdiction by virtue of diversity jurisdiction granted by 28 U.S.C. § 1332, and because the amount in controversy exceeds the sum or value of $75,000, exclusive of interest and costs.

4. The Plaintiff and Defendants are all corporations domiciled in three separate States.

5. In the Complaint, the Plaintiff Federal seeks amounts in excess of $75,000 from each of the Defendants.

6. This Notice of Removal is being filed in the United States District Court for the Southern District of New York, the District Court of the United States for the district and division within which the State Court Action is pending, as required by 28 U.S.C. §§ 1441(a) and 1446(a).

7. With the filing of this Notice of Removal, Defendants are also giving written notice thereof to Plaintiff's counsel, Judith Goodman, Esq., as indicated in the Notice to Adverse Party of Notice of Removal filed herewith.

8. Defendants are also filing a notice of the filing of this Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of New York, pursuant to 28 U.S.C. § 1446(d), where the Plaintiff commenced this action.

9. By filing this Notice of Removal, Defendant does not waive any defenses available to it at law, in equity or otherwise.

THE PARTIES

10. The Complaint filed in the State Court Action by Plaintiff Federal indicates only that Federal is a "foreign corporation." *See*, Exhibit A, ¶ 2. However, both this Court and the Court of Appeals for the Fourth Circuit have noted that Federal is an Indiana corporation. *See*, Gates, Hudson & Associates, Inc. v. Federal Ins. Co., 141 F.3d 500, 501 (4th Cir. 1997)("Defendant-Appellee Federal Insurance Company ("Federal") is an Indiana corporation with its principal place of business in New Jersey."); *and* Vinas v. The Chubb Corporation, 2007 WL 1741858, *2, FN4 (S.D.N.Y., June 14, 2007) ("...Federal Insurance Company is an Indiana corporation with its principal place of business in New Jersey.") A copy of the Vinas decision is annexed hereto as ***Exhibit C***.

11. American Home Assurance Company is domiciled in the State of New York.

12. National Union Fire Insurance Company of Pittsburgh, PA is domiciled in the State of Pennsylvania.

NATURE OF THE ACTION

13. In the Complaint, the Plaintiff Federal alleges that the Defendants AHA and National Union issued policies of insurance to the American Automobile Association, Inc. ("AAA National"), entitling AAA Mid-Atlantic, Inc. ("AAAMA") with a defense and indemnification with respect to claims asserted against AAAMA as a defendant in the underlying action of Cannon v. E&D Auto Repair Towing, et al., venued in the New Jersey Superior Court, Law Division, Middlesex County, under Docket No. MID-L-667-02. Plaintiff Federal alleges counts for declaratory judgment and reimbursement of costs and fees.

14. Pursuant to 28 U.S.C. § 1446(a), the Summons and Complaint attached as Exhibit A, and the Affidavits of Service attached as Exhibit B represent all process, pleadings, and orders served upon the Defendants in the State Court Action to date.

WHEREFORE pursuant to 28 U.S.C. § 1446, AHA and National Union petition for the removal of Federal Insurance Company a/s/o AAA Mid-Atlantic, Inc. v. American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA., bearing Index No. 601997/07, to the United states District court for the Southern District of New York. Pursuant to 28 U.S.C. § 1446(d), the filing of the Notice of Removal in the United States District Court for the Southern District of New York, together with the filing of a copy of the Notice of Removal with the Supreme Court of New York, New York County, effects the removal of this action, and the Supreme Court of New York, New York County may proceed no further unless and until the action is remanded.

Dated: Florham Park, New Jersey
July 13, 2007

Respectfully submitted,

SCHWARTZ SIMON EDELSTEIN
CELSO & KESSLER, LLC
Attorneys for Defendants
American Home Assurance Company and
National Union Fire Insurance Company of
Pittsburgh, PA

By: ______________________
LISA C. WOOD
Attorney Bar Code: **2628**

845 Third Avenue, 17th Floor
New York, New York 10022
Telephone: (212) 752-5258
Fax: (973) 765-1239

TO: Judith Goodman, Esq.
GOODMAN & JACOBS, LLP
75 Broad Street
New York, NY 10004
Phone: (212) 385-1191
Fax: (212) 385-1770

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

---X

FEDERAL INSURANCE COMPANY a/s/o
AAA MID-ATLANTIC, INC.,

Plaintiff,

-against-

AMERICAN HOME ASSURANCE COMPANY and
NATIONAL UNION FIRE INSURANCE COMPANY OF
PITTSBURGH, PA.,

Defendants.

---X

Index No.:

Date Purchased:

SUMMONS

YOU ARE HEREBY SUMMONED to answer the Complaint of plaintiff, Federal Insurance Company a/s/o AAA Mid-Atlantic, Inc., a copy of which is hereby served upon you, and to serve a copy of your answer upon the undersigned attorneys for plaintiff, Goodman & Jacobs LLP, whose address is 75 Broad Street, 30th Floor, New York, New York 10004, within twenty (20) days after the service of this Summons and Complaint, exclusive of the day of service, or within thirty (30) days after the completion of service where service is made in any other manner than by personal delivery within the state.

In case of your failure to answer the Complaint, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
June 14, 2007

GOODMAN & JACOBS LLP
Attorneys for Plaintiff
Federal Insurance Company a/s/o
AAA Mid-Atlantic, Inc.

By: ______________________
JUDITH F. GOODMAN

75 Broad Street, 30th Floor
New York, New York 10004
(212) 385-1191

TO: American Home Assurance Company
70 Pine Street
New York, New York 10270

National Union Fire Insurance Company of Pittsburgh, PA
70 Pine Street
New York, New York 10270

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
---X

FEDERAL INSURANCE COMPANY a/s/o
AAA MID-ATLANTIC, INC.,

Plaintiffs,

-against-

AMERICAN HOME ASSURANCE COMPANY and NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.,

Defendants.
---X

Index No.:

Date Purchased:

COMPLAINT

Plaintiff Federal Insurance Company a/s/o AAA Mid-Atlantic, Inc.("Federal"), by its attorneys, Goodman & Jacobs LLP, alleges as follows:

INTRODUCTION

1. This is an action to obtain a declaratory judgment and ancillary relief pursuant to CPLR §3001 relative to the rights and obligations of the parties to defend and indemnify AAA Mid-Atlantic, Inc. ("AAAMA") in a personal injury action which was tried to a verdict in Superior Court of the State of New Jersey, County of Middlesex, entitled Richard Douglas Cannon v. E & D Auto Repair Towing a/k/a E & D Repair, Gerard M. Taber, American Automobile Association, Inc., AAA Central-West Jersey, a Not For Profit Corporation, AAA Mid-Atlantic Inc., and John Doe 1-5 being the fictitious names of identities unknown, Ford Motor Company, Mentor Engineering Inc. d/b/a Mentor, Campana Systems, Inc. d/b/a Campana and Axis, and John Doe 6-12, being the fictitious names of persons and entities whose true identities are presently unknown, under Docket No. MID-L-677-02 (the "Cannon Action").

THE PARTIES

2. At all relevant times, Federal was and is a foreign corporation licensed to engage in the business of insurance in the State of New York with offices in the State of New York, County of New York.

3. At all relevant times, American Home Assurance Company ("American Home") was and is a domestic corporation licensed to engage in the business of insurance in the State of New York, with offices in the State of New York, County of New York.

4. At all relevant times, National Union Fire Insurance Company of Pittsburgh, PA ("National Union") was and is a foreign corporation licensed to engage in the business of insurance in the State of New York, with offices in the State of New York, County of New York.

THE COMPLAINT IN THE CANNON ACTION

5. This declaratory judgment action arises from the underlying Cannon Action. A copy of the Fourth Amended Complaint and Jury Demand in the Cannon Action, dated August 22, 2003, is annexed hereto as Exhibit A. A copy of the Fifth Amended Complaint and Jury Demand in the Cannon Action, which was deemed served on or about May 24, 2007, is annexed hereto as Exhibit B. (Except where otherwise noted, the Fourth and Fifth Amended Complaints are referred to collectively as the "Cannon Complaint").

6. The Cannon Complaint in the Cannon Action alleges, inter alia, that plaintiff Richard Douglas Cannon was operating a motor vehicle on Route 1 South, in the Township of Woodbridge, New Jersey on or about September 6, 2001 and was seriously and permanently injured when his vehicle was struck by a motor vehicle operated by defendant Gerard M. Taber

("Taber"), an employee of E & D Auto Repair Towing a/k/a E & D Repair ("E & D"), which was the owner of the vehicle.

7. The Cannon Complaint further alleges that E & D and Taber were the agents and/or servants and/or employees and/or acting on behalf of and/or acting for the benefit of and/or acting under the supervision of defendants American Automobile Association, Inc., ("AAA National") and AAAMA, and that all defendants acted in a negligent and careless manner, causing plaintiff's injuries.

8. On or about May 24, 2007, plaintiff's motion to amend his complaint to add a claim for punitive damages against AAAMA was granted and the Fifth Amended Complaint (Exhibit B hereto) was deemed served.

9. The Fifth Amended Complaint adds claims for punitive damages against AAAMA.

10. The Fifth Amended Complaint alleges, inter alia:

> 18. On and prior to September 6, 2001 defendants, American Automobile Association, Inc., AAA Central-West Jersey, a not-for-profit corporation, and AAA Mid-Atlantic, Inc. did institute, implement, own, utilize and encourage methods, procedures and equipment for conducting emergency road service operations, which methods, procedures and equipment exposed the public and in particular, plaintiff Richard Douglas Cannon, to an unreasonable risk of injury, in wanton and willful disregard of the rights and safety of plaintiff and the general public.
>
> 19. As a direct and proximate result of the aforementioned actions of defendants, American Automobile Association, Inc., AAA Central-West Jersey, a not-for-profit corporation, and AAA Mid-Atlantic, inc., plaintiff, Richard Douglas Cannon, sustained severe and permanent injuries, has suffered and permanently will suffer great pain, disability, disfigurement and mental anguish, was forced to seek medical attention, will be forced to seek further medical attention in the future due to the permanent nature of his injuries, has incurred and will incur

medical expenses and has been deprived and permanently will be deprived of carrying out his normal activities.

11. The Cannon Complaint alleges, inter alia, that defendants Ford Motor Company and certain "John Doe" defendants, as the designers and/or manufacturers and/or sellers of the 1984 Ford Mustang plaintiff was operating were liable for his injuries in that the 1984 Ford Mustang was not reasonably fit, suitable or safe for its intended purposes and reasonably foreseeable uses, and/or was designed in a defective manner. It further alleges that those defendants took various actions and made decisions regarding the 1984 Ford Mustang which exposed the public, and in particular, plaintiff Richard Douglas Cannon, to an unreasonable risk of injury, in wanton and willful disregard of the rights and safety of the plaintiff and the general public. The Cannon Complaint seeks compensatory and punitive damages against those defendants.

12. The Cannon Complaint further alleges that a mobile data terminal ("MDT") was installed in the flat-bed truck being operated by defendant Taber and that the MDT was manufactured by defendants Mentor Engineering, Inc. d/b/a Mentor ("Mentor"), Campana Systems Inc. d/b/a Campana ("Campana") and Axis, as well as certain "John Doe's." It alleges that the MDT was not reasonably fit, suitable or safe for its intended purposes and reasonably foreseeable uses and was designed in a defective manner. It further alleges that Mentor, Campana, and Axis took actions and made decisions concerning the MDT which exposed the public, and in particular Richard Douglas Cannon, to an unreasonable risk of injury, in wanton and willful disregard of the rights and safety of plaintiff and the general public. The Cannon Complaint seeks compensatory and punitive damages against those defendants.

THE INSURANCE POLICIES ISSUED TO AAAMA

A. The Federal Liability Policy

13. Federal issued its Liability Insurance policy number 3525-26-22 to AAAMA for the policy period June 28, 2001 to June 28, 2002, with a liability limit of $1 million each occurrence. (the "Federal Liability policy")

14. The "Other Insurance" provision of the Federal Liability policy provides, in pertinent part:

> If other valid and collectible insurance is available to the **insured** for a loss we cover under **bodily injury, property damage, advertising injury** or **personal injury** coverage of this insurance, our obligations are limited as follows:
>
> *Primary Insurance*
>
> This insurance is primary except when the Excess Insurance provision described below applies.
>
> If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then we will share with all that other insurance by the method described in the Method of Sharing provision described below.
>
> *Excess Insurance*
>
> This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:
>
> * * *
>
> D. That is valid and collectible **bodily injury, property damage, advertising injury**, or **personal injury** insurance:
>
> 1. provided you by anyone working under contract for you; or
>
> 2. provided by another party's policy to which you have been added as an additional insured.

When this insurance is excess, we will have no duty under **bodily injury, property damage, advertising injury** or **personal injury** coverages to defend any **insured** against a **suit** that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to the **insured's** rights against all those other insurers.

* * *

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- the total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- the total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not purchased specifically to apply in excess of the Limits Of Insurance shown in the Declarations of this insurance.

Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this method each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

15. The "Transfer of Rights of Recovery" provision of the Federal Liability policy states:

If the **insured** has rights to recover all or part of any payment we have made under this insurance, those rights are transferred to us. The **insured** must do nothing after loss to impair them. At our request, the **insured** will bring **suit** or transfer those rights to us and help us enforce them

* * *

B. The Federal Commercial Umbrella Policy

16. Federal issued its Chubb Commercial Umbrella policy number 7960-77-67 to AAAMA for the policy period June 28, 2001 to June 28, 2002 with limits of $25 million each occurrence. (the "Federal Umbrella policy")

17. The "Other Insurance" clause of the Federal Umbrella policy provides, in pertinent part:

> If **other insurance** applies to claims covered by this policy, the insurance under this policy is excess and we will not make any payments until the **other insurance** has been exhausted by payment of claims. This insurance is not subject to the terms or conditions of any **other insurance.**

18. The Federal Umbrella policy defines the term "other insurance" as follows:

> **Other Insurance** means a policy of insurance affording coverage that this policy also affords. **Other insurance** includes any type of self-insurance or other mechanism by which an **insured** arranges for funding of legal liabilities.
>
> **Other insurance** does not include **underlying insurance** or a policy of insurance specifically purchased to be excess of this policy affording coverage that this policy also affords.

19. The Federal Umbrella policy defines "underlying insurance" as follows:

> **Underlying insurance** means the policy or policies of insurance listed in the Schedule of Underlying Insurance forming a part of this policy.

20. The "Transfer of Rights of Recovery" provision of the Federal Umbrella policy states:

> 1. If the insured has rights to recover all or part of any payment we have made under this insurance, those rights are transferred to us. The insured must do nothing after loss to impair them. At our

request, the insured will bring suit or transfer those rights to us and help us enforce them.

2. Any amount recovered will be apportioned in the inverse order of payment of loss to the extent of actual payment. The expenses of all such recovery proceedings will be apportioned in the ratio of respective recoveries.

THE INSURANCE POLICIES ISSUED TO AAA ON WHICH AAAMA IS AN ADDITIONAL INSURED

A. The American Home CGL Policy

21. American Home issued its Commercial General Liability policy number GL 457-08-63 RA to AAA National for the policy period October 1, 2000 to October 1, 2001, with a limit of $1 million each occurrence (the "American Home policy").

22. Pursuant to Endorsement No. 0004, "Member Clubs of AAA" are made Additional Insureds, without limitation, under the American Home policy.

23. AAAMA, as a "Member Club of AAA," is an Additional Insured under the American Home policy.

24. The "Other Insurance" clause of the American Home policy provides, in pertinent part:

> 4. Other Insurance
>
> If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:
>
> a. **Primary Insurance**
>
> This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we

will share with all that other insurance by the method described inc. below.

b. **Excess Insurance**

This insurance is excess over:

(1) Any of the other insurance, whether primary, excess, contingent or on any other basis:

* * *

(d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to exclusion g. of Section 1- Coverage A - Bodily Injury And Property Damage Liability.

(2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. **Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

B. The National Union Commercial Umbrella Policy

25. National Union issued its Commercial Umbrella policy number BE 357 54 15 to AAA National, for the policy period October 1, 1998 to October 1, 2001, with limits of $25 million each occurrence (the "National Union policy"). The "Coverage" provision of the "Insuring Agreement" of the National Union policy provides, in pertinent part:

I. **Coverage**

We will pay on behalf of the **insured** those sums in excess of the Retained Limit that the **insured** becomes legally obligated to pay by reason of liability imposed by law or assumed by the **insured** under an **Insured Contract** because of **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** that takes place during the Policy Period and is caused by an **Occurrence** happening anywhere in the world. The amount we will pay for damages is limited as described in Insuring Agreement III, Limits of Insurance.

26. The National Union policy defines the term "insured," in pertinent part, as follows:

E. **Insured** means each of the following, to the extent set forth:

* * *

4. Any person or organization, other than the **Named Insured**, included as an additional insured in the policies listed in the Schedule of Underlying Insurance but not for broader coverage than is available to such person or organization under such underlying policies.

27. Upon information and belief, the American Home policy is listed on the Schedule of Underlying Insurance of the National Union policy.

28. Since AAAMA is an Additional Insured under the American Home policy, it is, upon information and belief, an Additional Insured under the National Union policy.

29. The National Union policy contains the following "Retained Limit" provision:

We will be liable only for that portion of damages in excess of the **Insured's** Retained Limit which is defined as the greater of either:

1. The total of the applicable limits of the underlying policies listed in the Schedule of Underlying Insurance and the applicable limits of any other underlying insurance providing coverage to the **Insured**; or

2. The amount stated in the Declarations as Self Insured Retention as a result of any one **Occurrence** not covered by the underlying policies listed in the Schedule of Underlying Insurance nor by any other underlying insurance providing coverage to the **Insured**;

and then up to an amount not exceeding the Each Occurrence Limit as stated in the Declarations

30. The National Union policy does not define "underlying insurance" as the phrase is used in paragraph 1 of the "Retained Limit" provision.

31. The "Other Insurance" clause of the National Union policy provides:

> If other valid and collectible insurance applies to a loss that is also covered by this policy, this policy will apply excess of the other insurance. However, this provision will not apply if the other insurance is specifically written to be excess of this policy.

COVERAGE WAS DULY DEMANDED BUT REFUSED
BY AMERICAN HOME AND NATIONAL UNION

32. AAAMA and Federal have duly demanded coverage for AAAMA in the Cannon Action under the American Home policy and the National Union policy, but American Home and National Union have failed and refused to provide said coverage.

33. In discovery in the Cannon Action, AAAMA's defense counsel had requested copies of the American Home policy and the National Union policy since April 11, 2002.

34. AAAMA's defense counsel received the American Home policy, for the first time, on April 11, 2007, from AAA National's defense counsel in the Cannon Action, during the trial of the Cannon Action.

35. AAAMA's defense counsel received the National Union policy, for the first time, on April 17, 2007 from AAA National's defense counsel in the Cannon Action, during the trial of the Cannon Action.

36. By letter dated April 19, 2007, Federal demanded coverage for AAAMA as an Additional Insured on the American Home policy and the National Union policy.

37. By letter dated April 26, 2007, AAAMA's counsel demanded coverage for AAAMA as an Additional Insured on the American Home policy and the National Union policy. In that letter, AAAMA's counsel advised, inter alia, that because AAAMA only learned of its Additional Insured coverage under the American Home and National Union policies in late

April, 2007, "[t]he entire pre-trial window of settlement opportunity closed without AAAMA ever realizing the availability of the [American Home and National Union] coverage, or [those insurers'] offering a single dollar in settlement on AAAMA's behalf."

38. Had AAAMA received the American Home policy and the National Union policy in a timely fashion, pursuant to AAAMA's counsel's discovery requests, AAAMA and Federal would have demanded Additional Insured coverage on those policies shortly after receiving them.

39. That AAAMA's and Federal's demands for Additional Insured coverage under the American Home policy and the National Union policy were made only in April 2007 is solely due to American Home's and National Union's delay in providing those policies and not due to any fault of AAAMA or Federal.

40. By letter dated May 8, 2007, Warren Usdin of AIG Domestic Claims, Inc. ("AIG"), the claims administrator for American Home and National Union, disclaimed coverage to AAAMA on behalf of those insurers.

41. AIG's May 8, 2007 letter (the "Disclaimer Letter") denied coverage under the American Home policy based, in part, on AIG's analysis of an endorsement entitled "Additional Insured -- Club Members" which it claimed formed a part of the American Home policy.

42. The American Home policy provided to AAAMA's defense counsel by AAA National's defense counsel in response to AAAMA's discovery demand did not contain an endorsement entitled "Additional Insured -- Club Members," upon which AIG's Disclaimer Letter relies.

43. AAAMA and Federal did not demand coverage under the purported (but not present in the policy) "Additional Insured -- Club Members" endorsement to the American

Home policy, but rather under Endorsement No. 4 to the American Home policy which identifies "Member Clubs of AAA" as Additional Insureds, which bears the policy number of the American Home policy, and which was provided to AAAMA's defense counsel in response to discovery demands.

44. The Disclaimer Letter further denied coverage based on Exclusion g. of the American Home policy, which exclusion has no application to the Cannon Action.

45. The Disclaimer Letter further denied coverage based on AAAMA's failure to comply with the "Duties in the Event of Occurrence, Offense, Claim or Suit" provision of the American Home policy, which ground is inapplicable because AAAMA complied with it only days after AAA National's defense counsel provided AAAMA's defense counsel with a copy of the American Home policy showing that AAAMA was an Additional Insured, which was "as soon as practicable" as required by the American Home policy.

46. The Disclaimer Letter incorrectly stated that "AAAMA qualifies as an additional insured pursuant to the "Additional Insured - Club Members" endorsement only to the extent of "their liability for [AAA, Inc.'s] activities or activities [AAAMA] perform[s] on [AAA Inc.'s] behalf" that "[o]ur review of the pleadings filed in this action does not reveal that AAAMA's alleged liability is based on any AAA, Inc. activity or any activity performed by AAAMA for AAA, Inc."

47. The Disclaimer Letter denied coverage to AAAMA under the National Union policy on the ground, in part, that since AAAMA did not qualify as an Additional Insured under the American Home policy, it likewise did not so qualify under the National Union policy.

48. The Disclaimer Letter further denied coverage to AAAMA under the National Union policy based on exclusion to the American Home policy and due to the "Retained Limit" and "Other Insurance" provisions of the National Union policy.

49. The Disclaimer Letter further denied coverage to AAAMA due to AAAMA's failure to comply with Condition F, "Duties in the Event of an Occurrence, Claim of Suit" provision of the National Union policy, which ground is inapplicable because AAAMA complied with it only days after AAA National's defense counsel provided AAAMA's defense counsel with a copy of the National Union policy showing that AAAMA was an Additional Insured, which was "as soon as practicable," as required under the National Union policy..

50. AIG's Disclaimer letter, with regard to both the American Home policy and the National Union policy, is in error in each and every respect.

51. By letters dated May 16, 2007 and May 21, 2007, respectively, counsel for AAAMA and counsel for Federal wrote to Mr. Usdin of AIG pointing out the errors in AIG's coverage position and advising, inter alia, that the "Additional Insured -- Club Members" endorsement on which AIG based its disclaimer was not part of the American Home policy provided to AAAMA's counsel, and that AIG's Disclaimer Letter wholly ignored Endorsement No. 4, which identified "Member Clubs of AAA" as Additional Insureds.

52. In his May 16, 2007 letter to Mr. Usdin, AAAMA's counsel further rebutted AIG's basis for disclaimer:

> First, you are wrong that AAAMA's alleged liability is not based upon any AAA Inc. activity. On the contrary, AAAMA's purported liability is predicated in large part on AAA Inc.'s decision to hold AAAMA and its other member clubs accountable to the adoption of certain nationwide AAA Inc. policies. These policies included requiring member clubs to adhere to strict national performance standards, including but not limited to a thirty-minute limit for AAAMA's

response time, and expecting them to adopt and utilize an electronic dispatch system.

53. Upon information and belief, the above-quoted statement by AAAMA's counsel is correct.

THE SETTLEMENT OF THE CLAIMS AGAINST AAAMA
AND THE SUBSEQUENT CONCLUSION OF THE CANNON TRIAL

54. Defendant Campana offered its full insurance policy limits in settlement prior to the commencement of the trial of the Cannon Action, and defendant Mentor offered its primary policy limits of $2 million prior to trial.

55. The trial of the Cannon Action began on April 10, 2007.

56. During the trial of the Cannon Action, numerous rulings were made which adversely impacted, and likely precluded, any chance of a defense verdict for AAAMA. Those rulings included, inter alia, the dismissal of co-defendant Ford Motor Company, the disqualification of AAAMA's expert, and the granting of plaintiff's motion to amend his complaint to assert a claim for punitive damages against AAAMA, which damages were uninsured, and the trial judge's advice that the issue of whether AAAMA was vicariously liable for Taber's and E & D's action was a matter of law on which he was prepared to rule.

57. During trial, both AAAMA and Firemen's Fund Insurance Company ("Firemen's Fund"), which provided Named Insured coverage to AAAMA excess of Federal's (and American Home's and National Union's) coverage, demanded that Federal offer its full policy limits in settlement of the Cannon Action due to the severity of the injuries, the likely liability verdict against AAAMA and the possibility of uninsured punitive damages being assessed against AAAMA.

58. On May 30, 2007, operating against a 7:00 p.m. deadline imposed by plaintiff's counsel as the final opportunity to settle the case, Federal offered the full policy limits of all policies it issued to AAAMA -- $26,500,000 -- in full settlement of the claims against AAAMA.

59. Cannon's counsel refused to accept Federal's offer of $26,500,000 in full settlement of the claims against AAAMA.

60. Despite requests from their Additional Insured, AAAMA, neither American Home nor National Union offered any monies in settlement on AAAMA's behalf.

61. On May 31, 2007, all claims against AAAMA in the Cannon Action were settled for a total of $27,250,000. Of that amount, Federal agreed to contribute $26,500,000. Fireman's Fund agreed to contribute the remaining $750,000.

62. After the settlement, in principle, of the claims against AAAMA on May 31, 2007, the trial of the Cannon Action continued.

63. The Cannon Action was tried to a verdict, which was rendered on June 8, 2007.

64. As set forth in the Verdict Sheet, the jury found, inter alia, that both AAAMA and AAA National were negligent on or before September 6, 2001, that AAAMA's negligence was a proximate cause of the accident, and that AAA National's negligence was not a proximate cause of the accident.

65. As set forth on the Verdict Sheet, the jury awarded plaintiff Cannon $12,000,000 in damages, finding the following percentages of liability:

E&D Repair/Gerard Taber	85%
AAA Mid-Atlantic	14%
AAA [National]	0%
Mentor Engineering	0%
Campana Systems	0%
Douglas Cannon	1%
Total	100%

66. The jury further found that defendants E&D Repair/Gerard Taber were the agents of AAAMA and that AAAMA was an agent of AAA National.

FIRST CAUSE OF ACTION

67. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 66 of the complaint with the same force and effect as if fully set forth herein.

68. The allegations in the Cannon Action against AAAMA fall within the policy period and coverage provisions of the American Home policy.

69. The American Home policy provides primary coverage to AAAMA for the Cannon Action.

70. Demand was duly made upon American Home to provide coverage to AAAMA for the Cannon Action.

71. American Home has wrongly failed to defend and indemnify AAAMA in the Cannon Action.

72. By reason of the foregoing, plaintiff is entitled to a declaration that American Home was required to defend and indemnify AAAMA in the Cannon Action.

73. Plaintiff has no adequate remedy at law.

SECOND CAUSE OF ACTION

74. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 73 of the complaint with the same force and effect as if fully set forth herein.

75. At all relevant times, AAAMA was an additional insured under the American Home policy and an insured under the Federal Liability policy.

76. Each of the aforesaid policies provides primary co-insurance to AAAMA in the Cannon Action.

77. By reason of the foregoing, plaintiff is entitled to a declaration that the Federal Liability policy and the American Home policy provide co-primary insurance to AAAMA in the Cannon Action.

78. Plaintiff has no adequate remedy at law.

THIRD CAUSE OF ACTION

79. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 78 of the complaint with the same force and effect as if fully set forth herein.

80. The allegations in the Cannon Action against AAAMA fall within the policy period and coverage provisions of the National Union policy.

81. The National Union policy provides coverage to AAAMA in excess of the policy limits of the Federal Liability policy and the American Home policy.

82. The settlement of the Cannon Action will result in the exhaustion of the Federal Liability policy and the American Home policy.

83. Demand was duly made upon National Union to indemnify AAAMA in the Cannon Action.

84. National Union has wrongly failed to agree to indemnify AAAMA in the Cannon Action.

85. By reason of the foregoing, plaintiff is entitled to a declaration that National Union is required to indemnify AAAMA in the Cannon Action upon the exhaustion of the Federal Liability policy and the American Home policy and that Federal has no obligation to indemnify AAAMA in the Cannon Action under the Federal Umbrella policy, until and unless the limits of the National Union policy are exhausted.

86. Plaintiff has no adequate remedy at law.

FOURTH CAUSE OF ACTION

87. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 82 of the complaint with the same force and effect as if fully set forth herein.

88. Because of American Home's failure to defend AAAMA in the Cannon Action, Federal provided a defense to AAAMA in the Cannon Action at Federal's expense.

89. Federal has incurred expenditures in the defense of AAAMA in the Cannon Action, including attorneys' fees, costs and disbursements, and thus has suffered damages.

90. Since said fees and expenses are the obligation of American Home as co-insurer with the Federal CGL policy, American Home is liable to Federal as a co-insurer for any and all attorneys' fees, costs and disbursements incurred by Federal in the defense of AAAMA in the Cannon Action.

FIFTH CAUSE OF ACTION

91. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 90 of the complaint with the same force and effect as if fully set forth herein.

92. The claims against AAAMA in the Cannon Action were settled for an agreed amount of $27,250,000.

93. Because of American Home's failure and refusal to provide coverage to AAAMA in the Cannon Action, Federal has agreed to pay $26,500,000 in settlement of the claims against AAAMA in the Cannon Action.

94. Since $1,000,000 of the said settlement amount is the obligation of American Home, American Home is liable to Federal in the amount of $1,000,000.

SIXTH CAUSE OF ACTION

95. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 94 of the complaint with the same force and effect as if fully set forth herein.

96. The claims against AAAMA in the Cannon Action were settled for an agreed amount of $27,250,000.

97. Because of National Union's failure and refusal to provide coverage to AAAMA in the Cannon Action, Federal has agreed to pay $26,500,000 in settlement of the claims against AAAMA in the Cannon Action.

98. Once the primary policies insuring AAAMA (the American Home policy, the Federal CGL policy and another Federal policy) pay their total policy limits of $2,500,000 in settlement of the claims against AAAMA, the remaining amount, $24,000,000, is the obligation of National Union.

99. National Union is liable in the amount of $24,000,000 to Federal for settlement of claims against AAAMA in the Cannon Action.

WHEREFORE, plaintiff demands judgment:

(i) Declaring that American Home is obligated to defend and indemnify AAAMA in the Cannon Action up to the limits of the American Home policy;

(ii) Declaring that American Home is obligated to defend and indemnify AAAMA as a primary co-insurer along with Federal under the Federal Liability policy in the Cannon Action;

(iii) Declaring that the National Union policy provides coverage to AAAMA in the Cannon Action excess of the limits of the Federal Liability policy and the American Home policy;

(iv) Declaring that Federal has no obligation to AAAMA under the Federal Umbrella policy until and unless the limits of the National Union policy are exhausted;

(v) As against American Home, ordering that it reimburse Federal as a co-insurer for any and all defense costs, attorneys' fees and disbursements expended by Federal in its defense of AAAMA in the Cannon Action;

(vi) As against American Home, ordering that it reimburse Federal for $1,000,000 for payments in settlement of the Cannon Action and interest thereon;

(vii) As against National Union, ordering that it reimburse Federal for $24,000,000 for payments in settlement of the Cannon Action, and interest thereon; and

(viii) Awarding plaintiff such other and further relief as this Court deems just and proper.

Dated: New York, New York
June 14, 2007

GOODMAN & JACOBS LLP
Attorneys for Plaintiff
Federal Insurance Company a/s/o
AAA Mid-Atlantic, Inc.

By: [signature]
JUDITH F. GOODMAN

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EXHIBIT A

N.J. SUPERIOR COURT
MIDDLESEX VICINAGE

03 SEP -2 PM 3:03

MELLA AND DIMIERO
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Attorneys for Plaintiff, Richard Douglas Cannon

RICHARD DOUGLAS CANNON, Plaintiff,	SUPERIOR COURT OF NEW JERSEY LAW DIVISION-MIDDLESEX COUNTY DOCKET NO.: L-677-02 Civil Action
vs.	
E & D AUTO REPAIR TOWING a/k/a E & D REPAIR, GERARD M. TABER, AMERICAN AUTOMOBILE ASSOCIATION, INC., AAA CENTRAL-WEST JERSEY, A NOT-FOR-PROFIT CORPORATION, AAA MID-ATLANTIC, INC. and JOHN DOE 1-5, being the fictitious names of persons and entities whose true identities are presently unknown, FORD MOTOR COMPANY, MENTOR ENGINEERING INC. d/b/a MENTOR, CAMPANA SYSTEMS INC. d/b/a/ CAMPANA and AXIS, and JOHN DOE 6-12, being the fictitious names of persons and entities whose true identities are presently unknown, Defendants.	FOURTH AMENDED COMPLAINT AND JURY DEMAND

RICHARD DOUGLASS CANNON, residing at 688 East Grand Avenue, Rahway, County of Union, State of New Jersey, by way of fourth amended complaint against the defendants, says:

FIRST COUNT

1. On or about September 6, 2001 plaintiff, Richard Douglas Cannon, was operating a motor vehicle on Rt. 1 South, in the Township of Woodbridge, County of Middlesex, State of New Jersey.

2. On or about September 6, 2001 defendant, E & D Auto Repair Towing a/k/a E & D Repair was the owner of a certain motor vehicle, which was being operated by its agent, servant, employee, and for its benefit by the defendant, Gerard M. Taber, on Rt. 1 South, Woodbridge, New Jersey.

3. On or about September 6, 2001, defendants, E & D Auto Repair Towing a/k/a E & D Repair and Gerard M. Taber, were the agents and/or servants and/or employees and/or acting on behalf of and/or acting for the benefit of and/or acting under the supervision and control of

defendants, American Automobile Association, Inc., AAA Central-West Jersey, a not-for-profit corporation, AAA Mid-Atlantic, Inc. and John Doe 1-5 (being the fictitious names of persons and entities whose true identities are presently unknown).

4. At the time and place aforesaid, defendants Gerard M. Taber, E & D Auto Repair Towing a/k/a E & D Repair, American Automobile Association, Inc., AAA Central-West Jersey, a not-for-profit corporation, AAA Mid-Atlantic, Inc. and John Doe 1-5 (being the fictitious names of persons and entities whose true identities are presently unknown) did act in a negligent and careless manner so as to cause the motor vehicle being operated by defendant, Gerard M. Taber, to strike the automobile of the plaintiff, Richard Douglas Cannon.

5. As a direct and proximate result of the aforesaid negligence and carelessness of the defendants, E & D Auto Repair Towing a/k/a E & D Repair, Gerard M. Taber, American Automobile Association, Inc., AAA Central-West Jersey, a not-for-profit corporation, AAA Mid-Atlantic, Inc. and John Doe 1-5 (being the fictitious names of persons and entities whose true identities are presently unknown), plaintiff, Richard Douglas Cannon, sustained severe and permanent injuries, has suffered and permanently will suffer great pain, disability, disfigurement and mental anguish, was forced to seek medical attention, will be forced to seek further medical attention in the future due to the permanent nature of his injuries, has incurred and will incur medical expenses and has been deprived and permanently will be deprived of carrying out his normal activities.

WHEREFORE, plaintiff, Richard Douglas Cannon, demands judgment against the defendants, E & D Auto Repair Towing a/k/a E & D Repair, Gerard M. Taber, American Automobile Association, Inc., AAA Central-West Jersey, a not-for-profit corporation, AAA Mid-Atlantic, Inc. and John Doe 1-5 (being the fictitious names of persons and entities whose true identities are presently unknown), jointly and severally, together with interest and costs of suit.

SECOND COUNT

6. Plaintiff, Richard Douglas Cannon, repeats the allegations of the First Count of the Fourth Amended Complaint as those same were set forth herein at length.

7. Prior to September 6, 2001, defendants, Ford Motor Company and defendants John Doe

6-8, being the fictitious names of persons and entities whose true identities are presently unknown, designed and/or manufactured and/or were product sellers of the 1984 Ford Mustang plaintiff was operating and which, upon information sufficient to form a belief, was further identified by VIN No. 1FABP28A1EF226409.

8. The aforementioned 1984 Ford Mustang was not reasonably fit, suitable or safe for its intended purposes and reasonably foreseeable uses, because it deviated from design specifications, formulae or performance standards of defendants or from otherwise identical units and/or failed to contain adequate warnings or instructions and/or was designed in a defective manner.

9. As a direct and proximate result of the defective 1984 Ford Mustang, on or about September 6, 2001 plaintiff, Richard Douglas Cannon, sustained severe and permanent injuries, has suffered and permanently will suffer great pain, disability, disfigurement and mental anguish, was forced to seek medical attention, will be forced to seek further medical attention in the future due to the permanent nature of his injuries, has incurred and will incur medical expenses and has been deprived and permanently will be deprived of carrying out his normal activities.

10. Prior to September 6, 2001 defendants, Ford Motor Company and defendants John Doe 6-8, being the fictitious names of persons and entities whose true identities are presently unknown, did design, manufacture, test, inspect, and did otherwise take actions and make decisions concerning the 1984 Ford Mustang which exposed the public, and in particular, plaintiff Richard Douglas Cannon, to an unreasonable risk of injury, in wanton and willful disregard of the rights and safety of plaintiff and the general public.

WHEREFORE, plaintiff, Richard Douglas Cannon, demands judgment against the defendants, Ford Motor Company and John Doe 6-8, being the fictitious names of persons and entities whose true identities are presently unknown, jointly and severally, for compensatory damages, exemplary and punitive damages, together with interest and costs of suit.

THIRD COUNT

11. Plaintiff, Richard Douglas Cannon, repeats the allegations of the First and Second Counts of the Fourth Amended Complaint as those same were set forth herein at length.

12. Prior to September 6, 2001, a mobile data terminal ("MDT") which, upon information and belief, was identified further as "EXPRESS MDT," was installed in the 1998 UD Flatbed Wrecker, which was being operated by defendant, Gerard M. Taber.

13. Prior to September 6, 2001, defendants, Mentor Engineering Inc. d/b/a Mentor, Campana Systems Inc. d/b/a/ Campana and AXIS, and defendants John 9-12, being the fictitious names of persons and entities whose true identities are presently unknown, designed and/or manufactured and/or were product sellers of the MDT and the systems by which it operated.

14. The aforementioned MDT and operating systems were not reasonably fit, suitable or safe for their intended purposes and reasonably foreseeable uses, because they deviated from design specifications, formulae or performance standards of defendants or from otherwise identical units and/or failed to contain adequate warnings or instructions and/or were designed in a defective manner.

15. As a direct and proximate result of the defective MDT and its operating systems, on or about September 6, 2001, the motor vehicle being operated by defendant, Gerard M. Taber, struck the Ford Mustang of the plaintiff, Richard Douglas Cannon, as a result of which plaintiff sustained severe and permanent injuries, has suffered and permanently will suffer great pain, disability, disfigurement and mental anguish, was forced to seek medical attention, will be forced to seek further medical attention in the future due to the permanent nature of his injuries, has incurred and will incur medical expenses and has been deprived and permanently will be deprived of carrying out his normal activities.

16. On and prior to September 6, 2001 defendants, Mentor Engineering Inc. d/b/a Mentor, Campana Systems Inc. d/b/a Campana and AXIS, and defendants John 9-12, being the fictitious names of persons and entities whose true identities are presently unknown, did design, manufacture, test, inspect, and did otherwise take actions and make decisions concerning the MDT and operating system which exposed the public, and in particular, plaintiff Richard Douglas Cannon, to an unreasonable risk of injury, in wanton and willful disregard of the rights and safety of plaintiff and the general public.